

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

391

CWP No.7074 of 2016 (O&M)

Date of Decision : 22/12/2017

Triveni Educational and Social Welfare Society

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Arjun Pratap Atma Ram, Advocate
for the petitioner.

Dr. Sushil Gautam, D.A.G., Haryana.

AJAY TEWARI, J.

By this petition the petitioner has sought a writ of mandamus directing the State of Haryana to grant it No Objection Certificate to affiliate itself with the Guru Gobind Singh Indraprastha University, New Delhi (herein after referred to as 'the University'). The University was set up by an Act of Delhi legislature, Section 4 whereof is as follows :-

4. *Jurisdiction :*

(1) Save as otherwise provided by or under this Act, the limits of the area within which the University shall exercise its powers, shall be those of The National Capital Region as defined in the National Capital Region Planning Board Act, 1985 (2 of 1985).

(2) No college or institution situated within the jurisdiction of the University shall be compulsorily affiliated to the University, and affiliation shall be granted by the University only to such college or institution as may agree to accept the

Statutes and the Ordinances.

It is further pleaded that after the University was set up the Haryana Government made appropriate amendments in the Maharshi Dayanand University Act (which otherwise had territorial jurisdiction over the area in which the petitioner-college is situated) and subsequent to it Haryana Government issued notification (Annexure P-9) wherein it was specified that the Government may on the merits and demerits of each case grant No Objection Certificate to an institution to be established in the area falling under the National Capital Region but within the territorial jurisdiction of Maharshi Dayanand University for affiliation with the University. (By notification Annexure P-9 the Haryana Government first laid down that as regards Colleges or Institutions of general education, technology, engineering, pharmacy, management and medical education in the districts of inter-alia Rohtak and Jhajjar, the Maharshi Dayanand University would exercise the jurisdiction and added a proviso that on the merits and demerits of the each case No Objection Certificate could be granted to an institution to be established in the area falling under the National Capital Region). Thereafter No Objection Certificate was given to another college in the immediate vicinity of the petitioner-College to seek affiliation from the University. It is therefore, prayed that the respondent-State is bound to grant No Objection Certificate to the petitioner-College to affiliate itself with the University also.

Learned counsel for the petitioner-College has argued that by Act No.2 of 1985 the Union Parliament had set up the National Capital

Regional Planning Board and had also specified the National Capital Region which included the area of District Jhajjar. It may be noticed that the National Capital Region Planning Board was to exercise the following functions as stipulated in Section 7 of that Act :-

*“7. **Functions of the Board** – The functions of the Board shall be -*

- (a) to prepare the Regional Plan and the Functional Plans;*
- (b) to arrange for the preparation of Sub-Regional Plans and Project Plans by each of the participating States and the Union Territory;*
- (c) to co-ordinate the enforcement and implementation of the Regional Plan, Functional Plans, Sub-Regional Plans and Project Plans through the participating States and the Union territory;*
- (d) to ensure proper and systematic programming by the participating States and the Union territory in regard to project formulation determination of priorities in the National Capital Region or sub-regions and phasing of development of the National Capital Region in accordance with stages indicted in the Regional Plan;*
- (e) to arrange for, and oversee, the financing of selected development projects. In the National Capital Region through Central and State plan fund and other sources of revenue.”*

A perusal of the above reveals that the Regional Plans and Functional Plans relate to policy in relation to land use and allocation of land for different uses; proposals for major urban settlement patterns; proposals for providing suitable economic base for future growth; proposals regarding transport and communication; proposals for supply of drinking water and drainage; indication of areas which require immediate

development and such other matters as may be included by the Board with the concurrence of the participating States. Reliance is placed on Section 27 of the Act, as per which the provisions of this Act would have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force.

The precise argument raised is that once the Delhi Parliament had conferred the jurisdiction on the University over the entire National Capital Region and once the Haryana Government had issued notification (Annexure P-9) and since another college in the immediate vicinity of the petitioner-College had been granted this No Objection Certificate the State could not refuse such No Objection Certificate to the petitioner-College. It has further been argued that when the Haryana Government had issued a No Objection Certificate to the petitioner-College to be started it had given permission to run four courses and out of them only two courses were being offered by the Maharishi Dayanand University and the remaining two courses were being offered by the University. On this score also, it is argued that the Haryana Government is now estopped from denying permission to affiliate with the University atleast as far as those two courses viz. B.Sc. + LL.B and B.Com+L.LB. are concerned .

Learned counsel for the petitioner-College has argued that the whole mistake in the approach of the State is that it has misapplied and misinterpreted the judgment of the Supreme Court in ***Prof. Yashpal & Anr. Vs. State of Chhattisgarh & Ors., 2005(1)S.C.T.808*** (Annexure P-18) while the judgment which would be applicable would be that of ***Shresth Shiksha Sanstha Vs. State of U.P. through Secretary Department of Higher***

Education and Guru Gobind Singh Indraprastha University through its Registrar, 2006 (65) ALR 857 (Annexure P-19). Further reliance has been placed on the judgment of this Court passed in CWP No.20055 of 2015 titled as *Punjab Technical University Non-Teaching Employees Association, Jalandhar & others Vs. State of Punjab and others* decided on 02.06.2016 (Annexure P-20). He contends that the judgment passed in *Prof. Yashpal & Anr.'s case (supra)* would be binding only in the context of private Universities since what was before their Lordships was The Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002.

It would be appropriate to have a brief over-view of that judgment. In that case, Prof. Yashpal, an eminent Scientist and former Chairman of University Grants Commission had filed a PIL for declaring certain provisions of the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 ultra vires. It had been averred that after coming into force of the Act the State Government had been establishing Universities in an indiscriminate and mechanical manner without having slightest regard to the availability of any infrastructure teaching facility or their financial resources (by simply issuing notification in the gazette). In a short span of about one year as many as 112 Universities were established and many of them had absolutely no building or campus and were running from one room tenements. There was absolutely no regulation or supervision over them and this legislation had completely done away with any kind of control of the UGC over these private Universities. Learned counsel for the petitioner has argued that the

observations of their Lordships can not be taken out of this context and applied in this ham-handed manner to the University which is not a private University. He has further stated that in this context the judgment of the Allahabad High Court in Shresth Shiksha Sanstha's case (supra) would hold the field because in that case an identical issue had come up in so much as a college like the petitioner-College had earlier been granted No Objection Certificate but that had been recalled and the High Court had held that action to be illegal.

On the other hand the contention of the State is that even though the Supreme Court was dealing with The Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 yet their Lordships had made far reaching observations about the power of the State legislature which would transcend the limited controversy in that case. He has particularly drawn the attention of this Court to ***Prof. Yashpal & Anr.'s case (supra)***, wherein it was held as follows :-

“13. In Volume 15 Halsbury's Laws of England (Fourth ed. Reissue) what is a University and how it is incorporated is described as under :

Para 256. General. A university is the whole body of teachers and scholars engaged, at a particular place, in giving and receiving instruction in the higher branches of learning; such persons associated together as a society or corporate body, with definite organization and acknowledged powers and privileges (especially that of conferring degrees), and forming an institution for the promotion of education in the higher or more important branches of learning; also, the colleges, buildings and other property belonging to such a body. Although the institutions to which it refers are readily identifiable, precise and accurate definition is difficult. The

essential feature of a university seems to be that it was incorporated as such by the sovereign power.

Other attributes of a university appear to be the admission of students from all parts of the world, a plurality of masters, the teaching of one at least of the higher faculties, namely theology, law or philosophy (which in some definitions are regarded as identical) and medicine, provision for residence and the right to confer degrees, but possession of these attributes will not make an institution a university in the absence of any express intention of the sovereign power to make it one. A university involves the relation of tutor and pupil; it is charged with the supervision and upbringing of the pupil under tuition. Incorporation was anciently effected by papal grant or charter, and later by royal charter or Act of Parliament.

The practice adopted in the case of the most recent foundations is to incorporate the university by royal charter, to which there is annexed a schedule containing the original statutes of the university, and thereafter to obtain the passing of a local Act of Parliament vesting in the university the property and liabilities of any institution which it replaces and making other necessary provisions.

A copy of any application for a charter for the foundation of any college or university which is referred by the Queen in Council for the report of a committee of the Privy Council must be laid before Parliament, together with a copy of the draft charter, for not less than 30 days before the committee reports upon it.

In 15A American Jurisprudence 2d "University" has been defined as under :

Para 1. Definitions.

Properly speaking, a "university" is an aggregation or union of colleges. It is an institution in which the education imparted is universal, embracing many branches, such as the arts,

sciences, and all manner of higher learning, and which possesses the power to confer degrees indicating proficiency in the branches taught.

The word "college" has been said to be employed in the United States to indicate an institution of learning, having corporate powers, and possessing the right to confer degrees, and which, with reference to its educational work, consists of the trustees, teachers, and scholars, all of whom make up the membership of the college and represent its active work. The term "college" may also be used to indicate a building, or group of buildings, in which scholars are housed, fed, instructed, and governed while qualifying for university degrees, whether the university includes a number of colleges or a single college. In a broad sense, the terms "college" and "university" convey the same idea, differing only in grade, with each indicating an institution of learning consisting of trustees, teachers, and scholars as making up its membership and representing its active work, or an institution engaged in imparting knowledge to resident students and possessing the right to confer degrees.

In the footnote to this paragraph reference is made to a decision which has some kind of similarity with the case in hand and the footnote reads as under :

A school offering correspondence courses in professional and other educational subjects, sending students textbooks and lessons to study, giving examinations based thereon, and awarding diplomas or degrees, but having no entrance requirements, resident students, library, laboratory, or faculty, is not a university. Branch v Federal Trade Com. (CA7) 141 F2d 31)

In the New Encyclopedia Britannica (15th ed) "University" has been described as under :

(Page 165) University, institution of higher education, usually comprising a liberal arts and sciences college and graduate

and professional schools and having the authority to confer degrees in various fields of study.

.....

.....

(Page 186) Universities and students looked toward ways of creating opportunities for a satisfying career outside traditional roles for graduates in scholarship, teaching, and the professions. The university's basic traditional functions remain unchanged - enabling students to learn from their cultural heritage, helping them to realize their intellectual and creative abilities, and encouraging them to become humane and responsible people. The university expands knowledge across the entire spectrum of disciplines, and it can add to the understanding and enjoyment of life. It continues to be needed for imaginative solutions to the problems of society.

14. Shortly after independence on 4.11.1948 the Government of India constituted a Commission known as "University Education Commission" of which Dr. S. Radhakrishnan was the Chairman. Dr. Tara Chand, former Vice-Chancellor, Allahabad University, Dr. Zakir Hussain, Vice-Chancellor, Aligarh Muslim University, Dr. A. Lakshmanaswami Mudaliar, Vice-Chancellor, Madras University, Dr. Meghnad Saha, Dean, Faculty of Science, Calcutta University and 5 other eminent personalities in the field of education were its members. The Commission gave a very long and exhaustive report. Chapter II of the report deals with the aims of University education and Para 2 of Part I is illustrative and the same is being reproduced below :

"2. Universities as the Organs of Civilization - He indeed must be blind who does not see that, mighty as are the political changes, far deeper are the fundamental questions which will be decided by what happens in the universities. Everything is being brought to the test of reason, venerable theologies, ancient political institutions, time-honoured social

arrangements, a thousand things which a generation ago looked as fixed as the hills. If India is to confront the confusion of our time, she must turn for guidance, not to those who are lost in the mere exigencies of the passing hour, but to her men of letters, and men of science, to her poets and artists, to her discoverers and inventors. These intellectual pioneers of civilization are to be found and trained in the universities, which are the sanctuaries of the inner life of the nation."

In the introductory paragraph of Chapter IV dealing with standards of teaching, the Commission recorded its views in the following words :

The need for High Standards.

Introduction - *It is the primary duty of a university to maintain the highest standards of its teaching and examinations. A university is a place of higher education where the personality and capacities of the students are developed to the utmost by teachers who should themselves be at work at the frontiers of knowledge in their respective fields. The success of a university is to be judged as much by the type of graduate it turns out as by the amount and quality of research contributed by its teachers and research students. It must be clearly recognized that there is no conflict involved between the twofold function of a university to educate its members and to advance the frontiers of knowledge - the two functions are, in fact, complementary. Unless high standards of teaching and examinations are maintained, research will suffer, since research can continue uninterruptedly only if there is a regular supply of graduates well prepared by general education for specialized research work. On the other hand, if research is neglected by teachers, their teaching will lack vitality and will rapidly become stale. A degree must always be what a university makes it by the kind of teaching it imparts and the type of intellectual and social life it provides for its members. If our universities are to be the makers of future leaders of*

thought and action in the country, as they should be, our degrees must connote a high standard of scholarly achievement in our graduates.

*The Commission noted that many of the Universities did not compare favourably with the best of British and American universities in respect of their teaching and examination standards. Unless highest standards of teaching in the Universities are ensured, the degree given by them will not command recognition and respect. The Commission observed :
"...Our universities should maintain the academic character of their work on a level recognized as adequate by the universities of other countries. Universities are our national institutions, and to keep up our national prestige, our degrees must be such as to command international recognition..."*

15. The Government of India constituted a Committee in December, 1961 to consider broadly the organizational structure of the Universities in India and to prepare the outline of a "Model Act" suited to their role and functions of which Dr. D.S. Kothari, Chairman, UGC was the Chairman and several other persons who were either Vice-Chancellors of Universities or were connected with the field of education were members. In the concluding part of the First Chapter, the Committee noted as under :

"... The function of the university is not only to preserve, disseminate and advance knowledge but also to furnish intellectual leadership and moral tone to society. No less important is the role of universities in promoting national integration and a common culture, and in bringing about the social transformation that is desired. Finally, universities have also to provide trained personnel to advance the country's prosperity by making full use of modern knowledge. The organizational pattern must enable the universities to achieve these objectives."

These reports prepared by most learned and eminent educationists in post independence era highlight the primary function of the Universities viz. teaching and research and to provide trained and qualified personnel for the progress of the nation.

16. Though incorporation of a University as a legislative head is a State subject (Entry 32 List II) but basically University is an institution for higher education and research. Entry 66 of List I is coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. There can thus be a clash between the powers of the State and that of the Union. The interplay of various entries in this regard in the three lists of the Seventh Schedule and the real import of Entry 66 of List I have been examined in several decisions of this Court. [In Gujarat University v. Shri Krishna](#) AIR 1963 SC 703, a decision by a Constitution Bench rendered prior to Forty-second Amendment when Entry 11 of List II was in existence, it was held that Item No.63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in the Parliament. The use of the expression "subject to" in item 11 of List II of the Seventh Schedule clearly indicates that the legislation in respect of excluded matters cannot be undertaken by the State Legislatures. In para 23, the Court held as under :

".....Power of the State to legislate in respect of education including Universities must to the extent to which it is entrusted to the Union Parliament, whether such power is exercised or not, be deemed to be restricted. If a subject of legislation is covered by items 63 to 66 even if it otherwise falls within the larger field of "education including Universities" power to legislate on that subject must lie with the Parliament. Item 11 of List II and item 66 of List I must be harmoniously construed. The two entries undoubtedly overlap; but to the

extent of overlapping, the power conferred by item 66 List I must prevail over the power of the State under item 11 of List II. It is manifest that the excluded heads deal primarily with education in institutions of national or special importance and institutions of higher education including research, sciences, technology and vocational training of labour.

The following observations in paras 24 and 25 highlight the supremacy of legislation made by the Parliament with reference to Entry 66:

"24. The validity of the State legislation on University education and as regards the education in technical and scientific institutions not falling within Entry 64 of List I would have to be judged having regard to whether it impinges on the field reserved for the Union under Entry 66. In other words, the validity of State legislation would depend upon whether it prejudicially affects co-ordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Ar.254(1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid.

25. Item No.66 is a legislative head and in interpreting it, unless it is expressly or of necessity found conditioned by the words used therein, a narrow or restricted interpretation will not be put upon the generality of the words. Power to legislate on a subject should normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that subject. Again there is nothing either in item 66 or elsewhere in the Constitution which supports the submission 'that the expression "co- ordination" must mean in the context in which it is used merely evaluation,

co-ordination in its normal connotation means harmonising or bringing into proper relation in which all the things co-ordinated participate in a common pattern of action. The power to co-ordinate, therefore, is not merely power to evaluate, it is a power to harmonise or secure relationship for concerted action. The power conferred by item 66 List I is not conditioned by the existence of a state of emergency or unequal standards calling for the exercise of the power."

20. The consistent and settled view of this Court, therefore, is that in spite of incorporation of Universities as a legislative head being in the State List, the whole gamut of the University which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State legislature on account of a specific Entry on co- ordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which the Parliament alone is competent. It is the responsibility of the Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained.....

27. The State Legislature is undoubtedly empowered to legislate and make an enactment for incorporation and establishment of Universities in view of Entry 32 of List II and Entry 25 of List III. The "University" as a topic of legislation has not been introduced for the first time in the Seventh Schedule of the Constitution but was already there in the Government of India Act, where Entry 13 of List I related to Banaras Hindu University and Aligarh Muslim University and Entry 17 of List II was education including Universities other than those specified in Entry 13 of List I. The framers of the Constitution had the same concept of "University" in their

mind as was there in the Government of India Act when they made the relevant entries in the Seventh Schedule of the Constitution. Keeping in view the principles of legislative practice, the word "University" should be given the same meaning as it was generally understood at the relevant time having due regard to what is ordinarily treated as embraced within that topic or subject.....

29. The State Legislature can make an enactment providing for incorporation of Universities under Entry 32 of List II and also generally for Universities under Entry 25 of List III. The subject "University" as a legislative head must be interpreted in the same manner as it is generally or commonly understood, namely, with proper facilities for teaching of higher level and continuing research activity. An enactment which simply clothes a proposal submitted by a sponsoring body or the sponsoring body itself with the juristic personality of a University so as to take advantage of Section 22 of UGC Act and thereby acquires the right of conferring or granting academic degrees but without having any infrastructure or teaching facility for higher studies or facility for research is not contemplated by either of these Entries. [Sections 5](#) and [6](#) of the impugned enactment are, therefore, wholly ultra vires being a fraud on the Constitution.....

36. In exercise of power conferred by Section 26 of the UGC Act, the University Grants Commission has made the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003. The Regulations have been made with the object of providing for a regulatory mechanism for establishment and operation of private Universities and for safeguarding the interests of the student community with adequate emphasis on the quality of education and to avoid commercialization of higher education and also to maintain standards of teaching, research and examination. Regulation 1.2 provides that the same shall apply to every private

University established by or incorporated under a [State Act](#), before or after the commencement of these Regulations. Regulation 1.5 provides that any private University which has started functioning before the commencement of these Regulations shall ensure adherence to these Regulations within a period of three months from the notification thereof and failure to comply with this requirement shall render any degree/diploma awarded by a private University as unspecified in terms of [Section 22](#) (3) of the UGC Act and shall invite penalty under [Section 24](#) of the said Act. Regulations 3.1, 3.2, 3.6 and 3.7 are important and they are being reproduced below :

3.1 Each private University shall be established by a separate [State Act](#) and shall conform to the relevant provisions of the UGC Act, 1956, as amended from time to time.

3.2 A private university shall be a unitary university having adequate facilities for teaching, research, examination and extension services.

3.6 The programmes of study leading to a degree and/or a post-graduate degree/diploma offered by a private university shall conform to the relevant regulations/norms of the UGC or the concerned statutory body as amended from time to time.

3.7 A private university shall provide all the relevant information relating to the first degree and post-graduate degree/diploma programme(s) including the curriculum structure, contents , teaching and learning process, examination and evaluation system and the eligibility criteria for admission of students, to the UGC on a proforma prescribed by the UGC prior to starting of these programmes.

37. Regulation 3.3 puts restriction on establishment of a University outside the State. Regulation 5 provides consequences of violation and lays down that if the Commission is satisfied that a private University has, even after getting an opportunity to do so, failed to comply with the

provisions of any of the Regulations, the Commission may pass orders prohibiting the private University from offering any course for award of the degree or diploma. Similarly, the UGC is empowered to take action against a private University awarding first degree and/or a post-graduate degree/diploma, which is not specified by the UGC and any private University continuing such programme and awarding unspecified degree shall be liable for penalty under Section 24 of the UGC Act.....

41. Dr. Dhawan has also drawn the attention of the Court to certain other provisions of the Act which have effect outside the State of Chhattisgarh and thereby give the State enactment an extra territorial operation. [Section 2\(f\)](#) of the amended Act defines 'off-campus centre' which means a centre of the University established by it outside the main campus (within or outside the State) operated and maintained as its constituent unit having the university's complement of facilities, faculty and staff. [Section 2\(g\)](#) defines "off-shore campus" and it means a campus of the university established by it outside the country, operated and maintained as its constituent unit, having the university's complement of facilities, faculty and staff. [Section 3 \(7\)](#) says that the object of the University shall be to establish main campus in Chhattisgarh and to have the study centres at different places in India and other countries. In view of [Article 245 \(1\)](#) of the Constitution, Parliament alone is competent to make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. The impugned Act which specifically makes a provision enabling a University to have an off-campus centre outside the State is clearly beyond the legislative competence of the Chhattisgarh legislature."

He has further argued that in Shresth Shiksha Sanstha's case

(supra) the judgment of Prof. Yashpal & Anr.'s case (supra) was not brought

to the notice of the learned Judge even though it had been decided much before the same and consequently that judgment would to that extent be per incuriam. He has further pointed out that after the decision in Prof. Yashpal & Anr.'s case (supra) the University Grants Commission had addressed letter dated 29.08.2011 which is annexed as Annexure R-I where the Commission had requested the State Govt. as under :-

“i. To take suitable steps for amending the existing Acts so as to bring the same in conformity with the observations made by the Hon'ble Supreme Court of India and adhere the same in all future cases.

ii. To stop all the State/State Private Universities in the State from operating beyond the territorial jurisdiction of the State in any manner either in the form of off-campus/study centre/affiliate college and the centres operating through franchises.”

In my opinion the arguments of the State have to prevail. It is trite to say that the Delhi legislature has jurisdiction only over the area comprised in the State of Delhi and, therefore, sub Section (1) of Section 4 of the Act by which the University was set up has to be deemed to be limited only to the area of Delhi. As regards the argument related to the Act No.2 of 1985 it has to be noticed that the setting up of the University is not covered under the Act.

As regards the argument that in the impugned order it has not been considered that BLS Institute of Technology Management, Bahadurgarh has been given permission. Suffice it to say that an argument of discrimination cannot be built on this fact since even as per the State permission can be given on case to case basis.

In the circumstances, no fault can be found with the action of the State.

Petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

22/12/2017
pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No